

VZCZCXYZ0014  
OO RUEHWEB

DE RUEHBUL #0369/01 0361518  
ZNY SSSSS ZZH  
O 051518Z FEB 07  
FM AMEMBASSY KABUL  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5927  
INFO RUEAIIA/CIA WASHINGTON DC PRIORITY  
RHEFDIA/DIA WASHINGTON DC PRIORITY  
RUEKJCS/JOINT STAFF WASHINGTON DC PRIORITY  
RUEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY  
RUEKJCS/SECDEF WASHINGTON DC PRIORITY  
RHMFISS/HQ USCENTCOM MACDILL AFB FL PRIORITY  
RHMFISS/CDR USEUCOM VAIHINGEN GE PRIORITY

S E C R E T KABUL 000369

SIPDIS

NOFORN  
SIPDIS

STATE FOR P, SCA/FO (DAS GASTRIGHT), SCA/A (JRELK), S/WCI  
(MSTAMILLO), L/PM (EPELOFSKY)  
NSC FOR AHARRIMAN  
OSD FOR ARICCI  
CENTCOM FOR CFC-A, CG CJTF-76, POLAD, CSTC-A

E.O. 12958: DECL: 02/05/2017

TAGS: [KAWC](#) [MARR](#) [MOPS](#) [PGOV](#) [PREL](#) [PHUM](#) [AF](#)

SUBJECT: DETAINEE LEGAL FRAMEWORK: GOA REPRESENTATIVES  
PROVIDE INTERIM RESPONSE

REF: A. STATE 11550  
[1](#)B. KABUL 68

Classified By: Political-Military Affairs Counselor Carol A. Rodley; re  
asons 1.4(b) and (d).

[1](#)1. (S/NF) Summary: Afghan interagency national security, military, and legal experts have not arrived at a final position on how the GOA will deal with "security detainees" -- i.e., those individuals that the GOA is unlikely or unable to prosecute in the Afghan national security or criminal justice system. Regarding the six "test cases" (reftel B) that the GOA has begun to review, the general consensus among the GOA legal experts is that five of the six cases appear prosecutable under Afghan criminal or national security law. They said that successful prosecution of some cases will require additional evidence obtained by further investigation, interview, and witness statements. Post believes that backfilling the Bagram Theater Interment Facility (BTIF) with detainees from Guantanamo Bay (GTMO) is premature and counterproductive in the near- to medium-term. We will continue our engagement with the GOA, aimed at bringing the Afghan interagency review to conclusion by mid-February. End Summary.

[1](#)2. (S) Pursuant to reftel, Charge requested January 31 that Deputy National Security Advisor Engineer Ibrahim Speenzada provide an interim response regarding the legal framework the GOA intends to apply to detainees transferred from BTIF or GTMO to GOA custody. (Note: The Afghan Office of the National Security Council had just completed its quality control scrubbing of the six "test cases" noted in reftel B, and the test cases had been distributed to Afghan interagency national security, military, and legal experts o/a January [1](#)31. Per reftel B, post previously had requested that the GOA provide a collective written response within two weeks of the Afghan interagency representatives receiving the translated test cases. End Note). Per reftel, Charge put specific emphasis on the question of how the GOA would handle detainees not clearly prosecutable under Afghan national security or criminal law. DNSA Ibrahim convened a meeting on February 5 of Afghan interagency experts to provide this interim feedback. The Afghan experts were well-prepared and able to discuss the details of the "test cases" (reftel B)

with facility. A list of Afghan and USG attendees is provided in para 8.

-----  
SECURITY DETAINEES  
-----

13. (S) POLMIL Counselor asked the Afghan legal experts what legal basis they would use for detaining security detainees -- i.e., those individuals that the GOA is unlikely or unable to prosecute in the Afghan national security or criminal justice system. None of the experts was able to offer a substantive reply. DNSA Ibrahim noted that the Afghan review is still ongoing, and suggested Afghan and U.S. experts reconvene in the next few days to discuss this and other issues further. He said it was his intention to provide a definitive, written response by mid-February of the laws and procedures the GOA intends to apply to transferred detainees.

(Comment: From the side-bar discussions in Dari that broke out around the table, in response to this question, it was clear that the GOA interagency has not yet arrived at a position on this point. End Comment)

-----  
"TEST CASES"  
-----

14. (S) The Afghan experts provided preliminary feedback on their review to date of the six "test cases" (ref B). The general consensus that emerged was that five of the six cases appear prosecutable. They said that successful prosecution of some of the cases will require additional evidence obtained by further investigation, interviews, and witness statements. In that context, Deputy AG Aloko asked whether

it would be possible for GOA prosecutors to take statements from U.S. personnel involved in the apprehension of detainees, if the prosecutors felt that would strengthen their case. There was also some disagreement among the Afghan experts as to whether a certain detainee would be prosecutable under criminal or national security law.

(Comment: Those disagreements appear resolvable with further Afghan interagency deliberation. End Comment)

15. (S) Most of the GOA experts appeared to concur that one case, that of a Hawala dealer suspected of laundering and redistributing funds on behalf of Al Qaeda, the Taliban, and Hizb-e Islami Gulbuddin (HIG), would not be prosecutable based on the background information provided. Only Deputy AG Aloko asserted that there would be a sufficient basis in Afghan law to prosecute all six individuals represented by the test cases. (Comment: Whether the prosecution in every case would be successful, cannot, of course, be assured. End Comment)

-----  
BACKFILLING BAGRAM  
-----

16. (S/NF) Reftel A invites Embassy's comments with regard to the proposal under consideration to "backfill" the Bagram Theater Internment Facility (BTIF) with detainees from Guantanamo Bay (GTMO) as detainees are transferred from BTIF to the Afghan National Detention Facility (ANDF). Post believes it would be premature to do so, until we have a clearer idea of the capacity at BTIF that will be required throughout the spring/summer offensive. Moreover, we are convinced that moving GTMO detainees to U.S. custody at BTIF in the near- to medium-term will attract significant negative public attention to BTIF, undermining our efforts to get the ANDF up and running. It would drive the public discussion toward questions surrounding the most difficult detainees, undercut the image of the GOA taking responsibility for Afghan detainees, and distract us and the GOA from making progress on the relatively easier cases. Any such decision needs to be carefully coordinated in advance with the GOA, to avoid damage to our detainee operational goals in Afghanistan.

-----  
WAY AHEAD  
-----

¶7. (S) Post appreciates the additional guidance provided in reftel A. We will continue our engagement with the GOA, aimed at bringing the Afghan interagency review to conclusion by mid-February, at which time our goal is to have a written articulation of the legal framework and review procedures the GOA intends to apply to detainees transferred to their custody from BTIF and/or GTMO.

-----  
MEETING ATTENDEES  
-----

¶8. (SBU)

GOA:  
Engineer Ibrahim Speenzada, Deputy National Security Advisor  
Mohammed Eshaq Aloko, Deputy Attorney General  
Sayed Zahir, Legal Advisor, National Directorate of Security (NDS)  
Said Yousuf Halim, General Head of the Legislative Institute, MOJ  
BG Abdul Majeed, Chief Judge of the Military Court of Appeal, MOD  
BG Sher Mohammad Zazai, Judge Advocate General, MOD  
MG Mohammad Amin Nooristani, Director General of Legal and Judicial Affairs, MOD  
MG Abdul Hadi Khalid, Deputy Minister for Security Affairs, MOI

USG:  
Embassy POLMIL Counselor

CSTC-A Staff Judge Advocate  
CSTC-A Chief of Detainee Operations  
CSTC-A Senior Legal Advisor, Detainee Operations  
CSTC-A Op Law Attorney  
Polmiloff (notetaker)  
NEUMANN